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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of STEVE and
STEPHANIE CASAZZA.

2d Civil No. B216042
(Super. Ct. No. SD036356)
(Ventura County)

STEVE CASAZZA,

Appellant,

v.

STEPHANIE CLINESMITH,

Respondent.

Steve Casazza appeals from a judgment of dissolution in which the court awarded to his former wife, respondent Stephanie Clinesmith, reimbursement for the down payment she made on a house the parties purchased before marriage. (Fam. Code, § 2640.)¹ Appellant contends that respondent is not entitled to reimbursement. He contends that the contributions of each party to the acquisition of the house must be presumed to be equal, regardless of actual cash contributions,

¹ All statutory references are to the Family Code unless otherwise stated.

because the parties originally took title as tenants in common, each with an "undivided 50.0000 %" interests. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2002, before they were married, the parties purchased a single family residence. Respondent paid all of the \$93,000 down payment and about \$10,000 in closing costs with her separate property money. Appellant contributed no cash. The grant deed stated that title was taken by appellant and respondent, a single man and a single woman, as "tenants in common," each with an undivided 50percent interest.

Appellant is a licensed real estate agent and a certified appraiser. He acted as the parties' agent in the purchase. He testified that he did not recall whether he instructed the escrow agent how to prepare title. Respondent testified that she did not speak with the escrow agent and that no one explained to her the meaning of the title description on the unsigned grant deed. The deed of trust, which she signed, identified the borrowers simply as "Steve A. Cassazza, a single man, and Stephanie M. Clinesmith, an unmarried woman."

The parties were married in July 2002. The parties took out a home equity line of credit secured by a second trust deed on the house. In October 2002, they paid \$50,000 to reduce the balance owed on the equity line. The source of funds was partly appellant's sale of his separate condominium and partly respondent's separate investment accounts.

In 2003, the parties refinanced the house, changing title to joint tenancy. It is undisputed that this 2003 event converted the residence to community property. (§ 2581.)

The parties separated in 2007 and appellant petitioned for dissolution. In March 2009, the court entered judgment on reserved issues including division of the house. The court awarded the property to respondent, with an equalizing payment to appellant, after reimbursement for the parties' separate property

contributions toward the acquisition and improvement of the property. (§ 2640; *In re Marriage of Weaver* (2005) 127 Cal.App.4th 858.)

Specifically, the court ordered reimbursements consisting of: (1) \$93,000 to respondent for her down payment,² (2) \$3,155 to appellant and \$6,351 to respondent for their respective contributions to improvements,³ and (3) \$32,500 to appellant and \$17,500 to appellant for their respective contributions to the \$50,000 post-conversion home equity line payment.

DISCUSSION

Reimbursements

Appellant contends that respondent should not be reimbursed for her down payment because the parties had equal separate property interests on the date of conversion, presumptively established by the form of title. He relies on the presumption that legal title reflects beneficial title, absent clear and convincing evidence to the contrary. (Evid. Code, § 662.) He argues that the form of legal title on the date of conversion reflected equal, undivided 50 percent separate interests as tenants in common, that no clear and convincing evidence to the contrary was presented at trial, and therefore the parties' separate property contributions upon conversion were equal and neither party was entitled to pre-conversion reimbursement. We disagree.

Pursuant to section 2640, a party who has made a separate property contribution to the acquisition of community property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift. Upon dissolution, the contributing party is entitled to reimbursement for their separate

² The court rejected appellant's claim that he had contributed \$11,625 by forgoing a commission on the sale, his claim that he gave respondent \$8,500 toward the down payment, and his claim for \$4,300 in pre-conversion mortgage payments.

³ Appellant had claimed \$14,965 and respondent had claimed \$12,624.51.

property contribution. (§ 2640, subd. (b).)⁴ In a dissolution action, the court has jurisdiction to divide separate property that is held by the parties as tenants in common or as joint tenants. (§ 2650.) Thus, where the parties acquire real property as tenants in common or as joint tenants before marriage and they subsequently convert it to community property, they are each entitled upon dissolution to reimbursement for their separate property contributions to its acquisition under section 2640. (*Rico v. Rico* (1992) 10 Cal.App.4th 706; *In re Marriage of Weaver*, *supra*, 127 Cal.App.4th 858.)

We "constru[e] section 2640 broadly to allow reimbursement for real property contributions, unless there is a written statement, apart from a joint tenancy deed, which specifically waives the right to reimbursement." (*In re Marriage of Weaver*, *supra*, 127 Cal.App.4th at p. 870.) In *Weaver*, the husband was entitled to reimbursement for his separate property down payment where the parties acquired the property before marriage as joint tenants and later converted it to community property.

We uphold a trial court's decision to reimburse a party for their separate property contributions to the acquisition or maintenance of community property if the decision is supported by substantial evidence. (*In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057-1058.) Here, the record contains no written statement waiving respondent's right to reimbursement and substantial evidence supports the court's finding that she adequately traced the down payment to a separate property source.⁵ The parties stipulated that that the cash down payment came from her separate property funds.

⁴ Section 2640 applies irrespective of the date of acquisition. (§ 2580.)

⁵ We do not rely on the presumption of undue influence that may arise in transactions between spouses under section 721. The purchase of the home and the preparation of the grant deed occurred before marriage.

Appellant contends that the form of title nevertheless negates respondent's right to reimbursement, based on the title presumption of Evidence Code section 662. His position cannot be reconciled with *Rico v. Rico*, *supra*, 10 Cal.App.4th 706. In *Rico*, the parties purchased a home before they were married. They took title as tenants in common. The husband-to-be made a down payment. After marriage, the parties converted the residence to community property by refinancing and changing the form of title to joint tenancy. Upon dissolution, the husband was entitled to reimbursement for his down payment, notwithstanding the presumption of equal ownership raised by the form of title. "Although the tenancy in common raised a presumption of equal ownership [citation], the [trial] court was authorized to order an equitable compensatory adjustment to compensate the parties for their respective use of separate funds to purchase and improve the residence." (*Id.* at p. 710.)

Appellant would distinguish *Rico*. He points out that the form of legal title in *Rico* was simply as tenants in common, whereas title in the present case specified that each tenant in common had an equal interest: an undivided 50 percent interest. It is a distinction without a difference because the *Rico* court assumed that "tenancy in common raised a presumption of equal ownership." (*Rico v. Rico*, *supra*, 10 Cal.App.4th at p. 710.) "When two or more persons take as tenants in common under an instrument silent as to their respective shares, a presumption arises [that] their shares are equal." (*Caito v. United California Bank* (1978) 20 Cal.3d 694, 705.) Despite this presumed equality, *Rico* affirmed the equitable compensatory adjustment based on the trial court's determination that the parties actually had unequal separate interests in the residence on the date of conversion arising from their unequal contributions to the purchase. (*Rico*, at pp. 710-711.) Here, too, we affirm, because substantial evidence in the record supports the trial court's determination that the parties had unequal separate interests in the residence on the date of conversion arising from their unequal actual contributions.

Attorney's Fees

Respondent's requests for an award of attorney's fees and costs on appeal pursuant to section 2030 is granted. The amount thereof must be addressed to the trial court in the first instance. (*In re Marriage of Shofield* (1998) 62 Cal.App.4th 131, 140-141.)

DISPOSITION

The judgment is affirmed. The amount of attorney's fees is to be determined by the trial court. Costs on appeal are awarded to respondent.

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COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

John Smiley, Judge
Superior Court County of Ventura

George H. Hultman, II, Denise Houghton, for Appellant.
Law Offices of Michael T. Frawley and Michael T. Frawley, for
Respondent.